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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 DAVID B. TURNER,

12 Plaintiff,

13 vs.

14 SAN DIEGO CENTRAL JAIL;  
15 CORPORAL SAUNDERS; DEPUTY  
16 TORRES; SAN DIEGO COUNTY  
17 SHERIFFS,

18 Defendant.

Civil No. 13-cv-1133-WQH-BGS  
ORDER

19 HAYES, Judge:

20 The matter before the Court is the Motion for Partial Summary Judgment filed  
21 by Defendants. (ECF No. 168).

22 **I. BACKGROUND**

23 On June 13, 2014, Plaintiff filed a Second Amended Complaint alleging three  
24 counts of constitutional violations. (ECF No. 55). The Second Amended Complaint  
25 is the operative complaint in this matter.

26 On August 17, 2015, Defendants filed a Motion for Summary Judgment pursuant  
27 to Federal Rule of Civil Procedure 56. (ECF No. 78). On October 5, 2015, Plaintiff  
28 filed his opposition. (ECF No. 83). On November 18, 2015, the Magistrate Judge  
issued the Report and Recommendation, recommending that Defendants' Motion for  
Summary Judgment be granted in part and denied in part. (ECF No. 93). On January  
19, 2016, the Court issued an order granting in part and denying in part Defendants'

1 Motion for Summary Judgment (the “January 2016 Order”). (ECF No. 104). The  
2 January 2016 Order dismissed Plaintiff’s Second and Third Claims, as well as all claims  
3 against San Diego County. *Id.*

4 The January 2016 Order denied Defendants’ Motion for Summary Judgment on  
5 Plaintiff’s excessive force claim against all Defendants except San Diego County. *Id.*  
6 The Court explained:

7 Plaintiff’s description of the altercation, however, is that he was “held  
8 down” and “repeatedly” “tased” and “kicked.” Plaintiff also contends that  
9 he had already been restrained “in handcuffs” when Defendant Saunders  
10 “walked in the holding cell, and began punching and kicking [Plaintiff] in  
11 his head or right eye.” At the summary judgment stage, the court must  
12 view the evidence in the light most favorable to the nonmoving party.  
Based on the contradictory testimony, the Court finds that genuine issues  
of material fact exist as to the threat reasonably perceived by Defendants  
when they employed force against Plaintiff.

13 *Id.* at 15.

14 On June 27, 2017, Defendants filed a Motion for a Partial Summary Judgment  
15 that:

- 16 1. No claim can be stated by Plaintiff for injuries allegedly sustained on  
17 March 20, 2013, the day before the incident at issue in this action, and  
18 no evidence pertaining to events occurring on March 20, 2013 shall be  
proffered in this action.
- 19 2. The only claim in this action is whether each defendant used  
20 excessive force on Plaintiff during their struggle with him on March 21,  
2013.

21 (ECF No. 168 at 1). On July 13, 2017, Plaintiff filed a Response in Opposition to  
22 Defendants’ Motion for Partial Summary Judgment. (ECF 169). On July 24, 2017,  
23 Defendants filed a Reply to Plaintiff’s Response. (ECF 170).

## 24 **II. FACTS**

25 Plaintiff arrived at the San Diego Central Jail (“Central Jail”) at 6:00 a.m. on  
26 March 20, 2013, after being arrested on charges of being under the influence of a  
27 controlled substance. (ECF No. 78-2 at 6). The medical examiner at Central Jail  
28 determined that Plaintiff could not complete the booking process until he was no

1 longer under the influence of what was believed to be a controlled substance. *Id.*  
2 Plaintiff resumed the booking process that afternoon. (ECF No. 78-1 at 9).

3 On March 21, 2017, an altercation involving Plaintiff and Defendants  
4 occurred at Central Jail. (ECF No. 168-1 at 2). Plaintiff was charged with violating  
5 California Penal Code § 69 for his conduct during the altercation. (ECF No. 78-2 at  
6 62-63). California Penal Code § 69 provides that it is a crime to “attempt[], by  
7 means of any threat or violence, to deter or prevent an executive officer from  
8 performing any duty imposed upon the officer by law, or [to] resist[], by the use of  
9 force or violence, the officer, in the performance of his or her duty.” The Criminal  
10 Complaint stated that

11 On or about March 21, 2013, DAVID BRYAN TURNER did  
12 unlawfully attempt by means of threats and violence to deter and  
13 prevent another who was then and there an executive officer from  
14 performing a duty imposed upon such officer by law, and did  
15 knowingly resist by the use of force and violence said executive officer  
in the performance of his/her duty, in violation of PENAL CODE  
SECTION 69.

16 (ECF No. 168-3 at 58). Plaintiff pled guilty to the criminal charges brought against  
17 him, admitting that he “did unlawfully prevent an officer from performing his duty  
18 by means of threats and violence.” (ECF No. 78-2 at 91).

### 19 **III. STANDARD OF REVIEW**

20 “A party may move for summary judgment, identifying each claim or  
21 defense—or the part of each claim or defense—on which summary judgment is  
22 sought. The court shall grant summary judgment if the movant shows that there is  
23 no genuine dispute as to any material fact and the movant is entitled to judgment as a  
24 matter of law.” Fed. R. Civ. P. 56(a).

### 25 **IV. ANALYSIS**

#### 26 **A. Events of March 20, 2013**

27 Defendants moved this Court for a summary judgment that “The only claim in  
28 this action is whether each defendant used excessive force on Plaintiff during their

1 struggle with him on March 21, 2013.” (ECF No. 168 at 1). Plaintiff states that he  
2 “is not pursuing any claims arising from March 20, 2013.” (ECF No. 169 at 3). No  
3 claim has been or can be stated by Plaintiff for injuries allegedly sustained on March  
4 20, 2013.<sup>1</sup>

## 5 **B. Events of March 21, 2013**

### 6 **1. Applicable Law**

7 In *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), the United States Supreme  
8 Court stated that

9 when a state prisoner seeks damages in a § 1983 suit, the district court  
10 must consider whether a judgment in favor of the plaintiff would  
11 necessarily imply the invalidity of his conviction or sentence; if it would,  
12 the complaint must be dismissed unless the plaintiff can demonstrate that  
the conviction or sentence has already been invalidated.

13 In *Hooper v. County of San Diego*, 629 F.3d 1127 (2011), the Court of Appeals  
14 applied the rule stated in *Heck* to plaintiff Hooper’s § 1983 claim. Hooper was arrested  
15 for possession of methamphetamine. *Id.* at 1129. Hooper resisted the officers attempt  
16 to arrest her, then “stopped resisting.” *Id.* Hooper alleged that the officer’s  
17 “department issue canine” bit her twice in the head after she had stopped resisting. *Id.*  
18 Hooper pled guilty to “willfully resist[], delay[], or obstruct[] any . . . peace officer .  
19 . . in the discharge or attempt to discharge any duty of his or her office or employment”  
20 in violation of violating California Penal Code § 148(a)(1). *Id.* at 1130. The Court of  
21 Appeals found that Hooper’s § 1983 claim was not barred by *Heck* because “[a] holding  
22 in Hooper’s § 1983 case that the use of the dog was excessive force would not ‘negate  
23 the lawfulness of the initial arrest attempt, or negate the unlawfulness of [Hooper’s]  
24 attempt to resist it.’” *Id.* at 1133 (alteration in original) (quoting *Yount v. City of*  
25 *Sacramento*, 183 P.3d 471, 482 (2008)).

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27 <sup>1</sup> The admissibility of evidence pertaining to the events of March 20, 2013 is the subject  
28 of Defendants’ Second Motion in Limine (ECF No. 171). The Court declines to address this  
issue at this time.

## 2. Contentions of the Parties

Defendants contend that Plaintiff has pled guilty to violently resisting the Defendants during the March 21, 2013 altercation. (ECF No. 170 at 3). Defendants contend that “Plaintiff’s claim for excessive force is precluded unless he can establish that the force he alleges was used on him was applied after he re-entered the cell, was handcuffed, and ceased resisting.” (ECF No. 168-1 at 6).

Plaintiff contends that “he did not plead guilty to forcefully resisting an officer.” (ECF No. 169 at 4). Plaintiff further contends that, “Even if [he] had pleaded guilty to forcefully resisting officers, *Heck* still would not preclude his § 1983 excessive force claim or require him to prove that excessive force was used after he stopped resisting.”

*Id.* at 6. Plaintiff contends that

“His [guilty] plea could be based on resisting the initial force Defendants used to hold him down. Under *Hooper*, a § 1983 claim based on subsequent punches, kicks, and taser deployments would not invalidate [Plaintiff]’s California Penal Code § 69 conviction, even if [Plaintiff] continued resisting throughout the altercation.”

*Id.* at 8-9.

## 3. Analysis

Based on the March 21, 2013 altercation, Plaintiff was charged with “unlawfully attempt[ing] by means of threats and violence to deter and prevent . . . an executive officer from performing [his/her] duty . . . and . . . knowingly resist[ing] by the use of force and violence said executive officer in the performance of his/her duty.” (ECF No. 168-3 at 58). Plaintiff pled guilty and stated that he “did unlawfully prevent an officer from performing his duty by means of threats and violence.” (ECF No. 78-2 at 91). Plaintiff has pled guilty to using violence to resist Defendants during the March 21, 2017 altercation.

In *Heck v. Humphrey*, the United States Supreme Court stated that a state prisoner’s § 1983 claims must be dismissed if “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction.” 512 U.S. 477, 487 (1994).

1 In *Hooper v. County of San Diego*, the Court of Appeals did not dismiss Hooper's  
2 excessive force claim based on the use of the police dog because a finding "that the use  
3 of the dog was excessive force would not 'negate the lawfulness of the initial arrest  
4 attempt, or negate the unlawfulness of [Hooper's] attempt to resist it.'" 629 F.3d 1127,  
5 1133 (2011) (alteration in original) (quoting *Yount v. City of Sacramento*, 183 P.3d 471,  
6 482 (Cal. 2008)).

7 Plaintiff's description of the altercation includes: (1) the force Defendants Seeley,  
8 Belay, Norie, Torres, and Warren used to "h[o]ld [Plaintiff] down," (2) the force used  
9 when Plaintiff "was being tased repeatedly and kicked repeatedly," and (3) the force  
10 used by Defendant Saunders when Plaintiff was handcuffed. (ECF No. 55 at 3).

11 Plaintiff pled guilty to violating California Penal Code § 69 by "unlawfully  
12 prevent[ing] an officer from performing his duty by means of threats and violence."  
13 (ECF No. 168-3 at 64). California Penal Code § 69 has two basic elements: (1) the  
14 guilty party must attempt to deter or resist an officer (2) in the performance of his or her  
15 duty. Plaintiff's conviction is valid if based solely on his resistance to the force  
16 Defendants Seeley, Belay, Norie, Torres, and Warren used to hold him down. By  
17 resisting that use of force, Plaintiff resisted several officers in the performance of their  
18 duties.


19 *Heck* prevents Plaintiff from bringing claims that "would necessarily imply the  
20 invalidity of his conviction." 512 U.S. at 487. Defendant contends that *Heck* bars  
21 Plaintiff from bringing claims based on force that was used before he ceased resisting.  
22 However, a judgment in Plaintiff's favor based on the second use of force identified in  
23 the complaint (the force used while he was held down and being kicked and tased  
24 repeatedly) would not necessarily imply the invalidity of his conviction, even if Plaintiff  
25 resisted that use of force; Plaintiff's conviction would still be valid based on his  
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1 resistance to the force used to hold him down.<sup>2</sup> A finding that kicking and tasing  
2 Plaintiff repeatedly constituted excessive force would not “negate the lawfulness of the  
3 initial [force used], or negate the unlawfulness of [Plaintiff’s] attempt to resist it.”  
4 *Hooper v. County of San Diego*, 629 F.3d 1127, 1133 (2011) (quoting *Yount v. City of*  
5 *Sacramento*, 183 P.3d 471, 482 (Cal. 2008)). Therefore, *Heck* does not require Plaintiff  
6 to “establish that the force he alleges was used on him was applied after he re-entered  
7 the cell, was handcuffed, and ceased resisting” in order to succeed on his § 1983 claim.  
8 (ECF No. 168-1 at 6).

9 **V. CONCLUSION**

10 IT IS HEREBY ORDERED that the motion for partial summary judgment filed  
11 by Defendants (ECF No. 168) is GRANTED IN PART AND DENIED IN PART. The  
12 Court GRANTS Defendants’ motion for a partial summary judgment that no claim can  
13 be stated by Plaintiff for injuries allegedly sustained on March 20, 2013. The Court  
14 DENIES Defendants’ motion for a partial summary judgment that Plaintiff must prove  
15 he had ceased resisting at the time that Defendants used excessive force against him in  
16 order to succeed on his § 1983 claim.

17 DATED: September 28, 2017

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19 **WILLIAM Q. HAYES**  
20 United States District Judge  
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26 <sup>2</sup> To recover on his excessive force claim, Plaintiff will have to prove that the force used  
27 was, in fact, excessive, and consequently that the officer who used it did not do so while  
28 performing his duty. *See Smith v. City of Hemet*, 394 F.3d 689, 695 (9<sup>th</sup> Cir. 2005) (en banc)  
 (“Excessive force used by a police officer at the time of the arrest is not within the  
 performance of the officer’s duty.”).